IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3383 OF 2007

Hemant Narsingh Patil & Ors. ....Applicants.
V/s
State of Maharashtra & Ors. ....Respondents.

Mr.Sandesh D. Patil, Adv. For the applicants.

Mr.S.R.Shinde, APP for respondent No.1.

Mr.R.V.Bansode, Adv. for the respondent No.4.

CORAM: A.P.DESHPANDE, J.
6/12/07

PC:

By consent of parties application is taken up for final hearing. The applicants are original accused in Sessions Case No.17/04. The applicants are taking exception to an order passed below Ex.1 in Criminal Misc. Appln. No.34/07 passed by the Sessions Judge, Thane dated 30.4.07. The application in question was moved by the brother of the deceased Nandkishore Patil who is allegedly murdered by the accused applicants seeking transfer of Sessions Case pending on the file of 3rd Ad-hoc District & Sessions judge, Thane. It is undisputed that the case was tried before the earlier Presiding Officer Shri Jagtap and after his transfer the case came to be assigned to the present Presiding Officer J.D.Shirwalkar, 3rd Ad-hoc District & Sessions Judge,

Thane. Before the said Judge as well two witnesses came to be examined and thus hearing had commenced. On this set of facts the question is raised in this application as to whether the the Sessions Judge has jurisdiction to entertain an application under section 409 of Criminal Procedure Code and withdraw the case from the file of the Presiding Officer and transfer it to some other Judge. The learned Counsel for the applicants has placed reliance on a Division Bench judgment in the case of ***Daulatrao s/o Dashrath Dhone*** v/s ***The State of Maharashtra & Ors.***, 2002 ALL M.R.(Cri.) 1370. A similar question fell for consideration of the Division Bench and the Division Bench held that so far as the judicial powers are concerned Sessions Judge is not superior to the Additional Sessions Jude. The Sessions Judge has administrative powers to allot or assign the work to different additional Sessions Judges working with him. However the administrative power of assignment of work can be exercised by Sessions Judge until the Additional Sessions judge commences the hearing of the case. It is further held that once the case is transferred to a particular Addl. Sessions Judge who partly heard the matter the Sessions Judge does not have the power to withdraw the case from him. The said judgment rendered by the Division Bench is followed by learned Single Judge of this Court in an unreported judgment delivered in Criminal Application No. 226/07 dated 3.8.07. In view of the fact that the Sessions Judge lacks jurisdiction to withdraw the case from the file of 3rd Ad-hoc Additiional Sessions Judge, Thane the

impugn;ed order passed below Ex.1 in Cri.MCA No.34/07 deserves to be quashed and set aside. In the result application is allowed. The impugned order dated 30.4.07 is quashed and set aside. However it is made clear that it shall be open for the respondent to prefer an appropriate application in the High Court seeking transfer of the case. In order to enable the respondent to make an appropriate application in the High Court seeking transfer of the case I direct that the proceedings in Sessions Case No.17/04 shall remain stayed for a period of four weeks. Rule made absolute accordingly.

6.12.07